IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5820 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALUSING @ KANUSING BURSING BARIYA

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 5820 of 2004

MR AM PAREKH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the

petitioner- detenu has challenged the legality and validity of the order of detention dated 26.03.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The allegation against the present petitioner-detenu is that he has involved himself in the offence punishable under the provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956. It reveals from the grounds of detention served to the petitioner produced at Annex.B to the petition, it reveals that one offence has been registered with Gomtipur Police Station being II.CR No.3060/2004 under the provisions of the aforesaid Act on 01.03.2004. The detenu was arrested on the same day.

3. Ld. counsel Mr. AM Parekh assailed the grounds of detention on various grounds. However, in view of the facts stated in the affidavit-in-reply tendered today by ld. AGP Ms. Punani, has focussed his arguments mainly on two grounds. The first ground canvassed by ld. counsel Mr. Parekh is that only one case is registered and in the event of solitary case, a person normally should not be detained under PASA and his activity can not be said to be prejudicial to the maintenance of public order. Powers exercised by the detaining authority can not be said to be in public interest. Detaining authority is under statutory obligation to strike the balance when proposal for passing of order of detention is made before the detaining authority on the basis of a solitary offence. The second ground canvassed by ld. counsel Mr. Parekh is that the day on which the petitioner was detained, he was already in judicial custody and there is no reference even in the grounds of detention that he had prayed for bail in connection with the offence registered against him. Undisputedly, he was in judicial custody. So, there was no need for the authority to pass an order of detention.

4. The arguments advanced by ld. counsel Mr. Parekh are based on settled legal position and, therefore, the same shall have to be accepted. It is not necessary to quote the observations of this Court made in such or similar cases. However, order of detention can be set at naught by accepting the ratio laid down by this Court (Coram: Hon'ble Mr.Justice P.B. Majmudar) in the

case of Alibhai Musabhai Patel v/s State of Gujarat, while dealing with Spl.C.A. No.3218/2004 wherein this Court, vide Oral Judgment passed on 28.06.2004 disposing of the said petition. In the said petition, the detenu was found involved in the solitary offence and it was held that the detenu can not be said to be "habitual offender". So, accepting the reasons and ratio laid down by this Court in the case of Alibhai (Supra), this petition also shall have to be allowed on this ground alone without going into the merits of other grounds raised by ld. counsel appearing for the petitioner.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 26.03.2004 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[C. K.BUCH, J]

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